Erect Scaffolding Pte Ltd v Hor Kew Pte Ltd
[2007] SGHC 160

Case Number : Suit 264/2005, RA 27/2007, RA 42/2007

Decision Date : 24 September 2007

Tribunal/Court : High Court

Coram : Lee Seiu Kin J

Counsel Name(s) : Lee Mun Hooi (Lee Mun Hooi & Co) for the plaintiff; Eugene Tan and Tan Wei Yi (Drew & Napier LLC) for the defendant

Parties : Erect Scaffolding Pte Ltd — Hor Kew Pte Ltd

Damages – Measure of damages – Tort – Conversion – Measure of damages is reasonable sum for hire during period of detention – Whether quantum of damages for period of detention measured by taking rates for individual components – Measure and quantum of damages for items lost

24 September 2007

Lee Seiu Kin J

1 In July 2002 the HDB awarded to Wan Soon Construction Pte Ltd ("Wan Soon") a contract for the construction of 1384 units of flats at the Kallang Whampoa area ("the Works"). Wan Soon awarded to the plaintiff, a company in the business of providing scaffolding material for construction works, the sub-contract for the rental, erection and dismantling of metal scaffolding for the Works. This was a lump sum contract of about $980,000. Pursuant to this sub-contract the plaintiff commenced the supply and erection of scaffolding as Wan Soon progressed with the Works. However in April 2004, the HDB terminated the contract with Wan Soon who in turn terminated the sub-contract with the plaintiff. By this time, the plaintiff had erected scaffolding for about a third of the height of the blocks of flats amounting to about 30% of the entire scaffolding requirement. In May 2004, the HDB awarded the balance of the Works to the defendant. The plaintiff and defendant attempted to come to agreement on the terms under which the defendant could take over the rental of the scaffolding already erected by the plaintiff on site, and for the plaintiff to supply and erect the scaffolding for the remainder of the works. The plaintiff initially quoted a sum of $1.1m that was eventually reduced to $1.094m. However they failed to reach agreement because they could not agree on the prices of other related materials. In the event the defendant engaged another contractor, Lian Beng, to supply and erect the remainder of the scaffolding for the sum of $1.15m. Lian Beng erected its scaffolding above (but without being connected to) the plaintiff's scaffolding. In the course of completing the Works, the defendant made use of the plaintiff's scaffolding for the lower levels. Upon completion of the Works, Lian Beng dismantled its scaffolding as well as those belonging to the plaintiff, returning the pieces belonging to the plaintiff to its store. However the plaintiff claimed that a large number of pieces were not returned. The parties agree that the conversion terminated between June 2005, when the defendant requested the plaintiff to remove the scaffolding for certain blocks, and March 2006 when all scaffolding (except for the missing items) were returned.

2 The plaintiff took out the writ of summons in this action on 21 April 2005, claiming the return of all its metal scaffolding and damages for conversion. The plaintiff applied in Summons No 2881 of 2005 for judgment but the Assistant Registrar granted unconditional leave to defend on 17 August 2005. The plaintiff appealed against this order in Registrar's Appeal No 234 of 2005. On 7 September 2005 the High Court allowed the appeal and granted the plaintiff interlocutory judgment against the

defendant with damages to be assessed with costs of the hearing below and the appeal be reserved to the Registrar.

3 On 19 January 2007, after a 9-day assessment hearing in Notice of Assessment No 23 of 2006 held on 14-15 June, 28-30 August, 4-5 October, 11 December 2006 and 19 January 2007, the Assistant Registrar made the following orders:

(a) judgment be entered for the plaintiff in the sum of $157,792.73 being damages assessed and interest thereon at 6% per annum from 1 July 2004 till date of judgment;

(b) costs fixed at $13,000.00 and reasonable disbursements be paid by the defendant to the plaintiff for the summary judgment and the appeal hearing; and

(c) costs fixed at $110,000.00 and reasonable disbursements be paid by the defendant to the plaintiff for the hearing on assessment of damages.

4 In Registrar's Appeal No 27 of 2007 the plaintiff appealed against the decision of the Assistant Registrar ordering judgment in the sum of $157,792.73. The plaintiff prayed for damages to be assessed at $1,499,415.09 for conversion and $362,497.91 in compensation for lost items, as well as interest thereon.

5 In Registrar's Appeal No 42 of 2007, the defendant appealed against the decision of the Assistant Registrar ordering costs against the defendant fixed at $13,000.00 and reasonable disbursements for the summary judgment and appeal hearing, and fixed at $110,000 and reasonable disbursements for the assessment of damages hearing, and interest on the judgment sum at 6% per annum from 1 July 2004 to date of judgment.

6 Counsel made their submissions to me on 21 March and 7 May 2007, at the end of which I allowed the appeal in Registrar's Appeal No 27 of 2007 and awarded the plaintiff the following sums:

(a) $331,500 being damages in conversion with interest on that sum to run from the date of the cause of action, *viz*. 1 July 2004; and

(b) $148,111 being damages for the lost items with interest to run from the date of interlocutory judgment, *viz.* 19 January 2007.

Thereafter the defendant applied for leave to withdraw its appeal in Registrar's Appeal No 42 of 2007, which I granted.

7 On 5 June 2007 both parties filed appeals against the whole of my decision of 7 May 2007. The plaintiff's appeal is filed in Court of Appeal No 65 of 2007 and the defendant's appeal in Court of Appeal No 68 of 2007. I now give the grounds for my decision.

8 The first head of damages is in conversion. For the relevant period the defendant had converted for its use the scaffolding that the plaintiff had erected on the site. At issue was the quantum of damages. The plaintiff contend that in law the measure of damages is for a "reasonable sum for hire during the period of detention", citing *Clerk & Linsell on Torts 17th Edition* [13-138] and *Strand Electrical Engineering Co Ltd v Brisford Entertainments Ltd* [1952] 2 QB 246 ("Strand's case"). *Strand's* case was followed by the Court of Appeal in *Siew Kong Engineering Works v Lian Yit Engineering Sdn Bhd* [1993] 2 SLR 505. The plaintiff produced expert evidence on the market rates for various scaffolding components and based on those rates his claim came up to about $1.5m.

9 The defendant did not dispute that the relevant criterion for assessment of damages was a reasonable sum for hire during the period of detention. However the defendant disputed the plaintiff's contention that this is to be measured by taking the rates for individual components as this did not take into account that the large number of components involved which would, in the ordinary course of commerce, be rented out on a bulk rate basis.

10 I agreed with the defendant's contention that it would not be reasonable to use market rates of individual components to assess damages in a bulk situation as this one. The better approach would be to use the evidence that is available in this case of the rate that the plaintiff could have fetched in a situation where he is renting out a similar quantity of scaffolding in similar circumstances. One piece of evidence for this is the $1.094m that the plaintiff had quoted in negotiations to resolve the matter, although this is for the period from June 2004 to November 2005. Another piece of evidence is the $1.15m that the plaintiff had contracted with Lian Beng for the remainder of the scaffolding required for the period between April and September 2005. These figures would have to be adjusted for the fact that they pertain to a larger quantity of scaffolding (100%) than that in question (30%). Further evidence is found from the negotiations conducted by the parties in early 2005. On 6 January 2005 the plaintiff offered to rent the detained scaffolding until June 2005 for $390,000. This was rejected by the defendant who counter-offered $104,280 and later raised to $260,000.

11 $390,000 would certainly represent the upper limit of the market rate for the scaffolding for the period up to June 2005. Considering all the evidence available, I held that $390,000 was a fair rental rate for the detained scaffolding for the entire period of conversion (sometime between June 2005 and March 2006). However his rate included removal and as the defendant had undertaken that task, a deduction would have to be made to take into account the fact that the plaintiff had not incurred that cost. The only evidence of such cost was given by the defendant's expert, who said that it would come up to 15% of the total rental. This was compared with the figure of $147,000 that the defendant had incurred in effecting the removal (which would constitute 38% of the $390,000). As the actual costs incurred by the defendant would have been higher due to complication in having to identify and separate the scaffolding belonging to the plaintiff and to Lian Heng, I took the lower figure of 15%. Reducing the sum of $390,000 by 15% would result in the figure of $331,500 which I awarded as damages for conversion.

12 The second head of damages pertains to items that were not returned by the defendant and, in effect, lost. I was satisfied on the evidence that the plaintiff had adduced sufficient evidence to prove on a balance of probability that the defendant had failed to return those items. The plaintiff's expert had given evidence of a range of rates for the various items concerned. The defendant had not adduced any evidence of such rates. The rates provided by the plaintiff's expert for the various items and quantities concerned are summarised in the table below:

Item	**Quantity**	**Plaintiff's rates**	**Rates of other contractors**	**Sum awarded using lower rates**
ST 301A Cross Brace	4947	$3.00 to $5.00	$5.10 to $8.50	$14, 841.00
ST 502 Wall Tie	2332	Nil	$4.30 to $8.00	$11,027.60

ST 601 Jack Base	1095	Nil	$5.75 to $11.00	$6,296.25
ST 701 Joint Pin	1291	$0.65 to $3.00	$0.80 to $2.40	$839.15
ST 801 Arm Lock	34704	Nil	$1.40 to $2.60	$48,585.60
Right Angle Clamp	20326	$1.00 to $1.80	$0.32 to $3.90	$6,504.32
Swivel Clamp	2553	$1.00 to $1.50	$0.32 to $3.90	$816.96
Bracket	107	Nil	$75.00 to $78.90	$8.025.00
Cable	1651	Nil	$9.10	$15,024.10
4m C-channel	68	Nil	$37.00	$2,516
3m C-channel	41	Nil	$28.00	$1,148
2m C-channel	44	Nil	$19.00	$836
5m Pipe	86	$21 to $21.60	$20.00 to $39.00	$1,720
4m Pipe	222	$19.00	$13.33 to $26.00	$2,595.26
3m Pipe	349	$10.50	$20.00	$3.664.50
2m Pipe	2372	$7.00	$6.67 to $13.00	$15,821.24
1m Pipe	3536	$2.40 to $3.50	$3.33 to $7.00	$8,486.40
Total				**$148,111.38**

13 I awarded damages on the basis of the lower rates. This is shown in the last column of the table. This came to $148,111.

14 I also ordered the defendant to pay interest on the sum of $331,500 from the cause of action on 1 July 2004 and on the sum of $148,111 from the judgment on 19 January 2007.

15 As the defendant had withdrawn its appeal in Registrar's Appeal No 42 of 2007, there was no necessity for me to deal with the question of costs awarded by the Assistant Registrar below. I therefore did not consider it. However, despite this, the notice of appeal filed by the defendant appears to include the matters in Registrar's Appeal No 42 of 2007. If that be so, I would state that if I had considered the matter, I would have dismissed the defendant's appeal in Registrar's Appeal

No 42 of 2007 in view of my decision in Registrar's Appeal No 27 of 2007.

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